

EXHIBIT 13

ROGERS JOSEPH O'DONNELL

Lisa N. Himes
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	Washington DC 20005
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September 24, 2018

VIA PRIORITY MAIL

U.S. Immigration and Customs Enforcement
Office of the Principal Legal Advisor
U.S. Department of Homeland Security
500 12th Street, S.W., Mail Stop 5900
Washington, D.C. 20536-5900

Re: FOIA Appeal – Case Number 2018-ICFO-31995

To Whom It May Concern:

On behalf of client, Tim Blixseth, this letter serves as an appeal of the adverse determination by ICE in the above-referenced FOIA case.

The attached FOIA Request (hereinafter “Request”) was submitted to ICE via email and mail on April 17, 2018. *See* Exhibit 1. The Request seeks “[a]ll documents that refer or relate to Blixseth, Aircraft Tail Number N650GC, or Yellowstone Aviation & Marine.” *See id.* It also seeks “[a]ll emails from any and all of former U.S. ICE Director John Morton’s email accounts from the period of January 1, 2010 through December 31, 2010, referencing: (a) N650GC; (b) Yellowstone; (c) Yellowstone Aviation & Marine; and (d) Blixseth. *See id.*

On August 16, 2018, the agency issued its final and only substantive response to the Request. *See* Exhibit 2. The only documents produced were news clippings that the FOIA Office concluded were attachments to John Morton’s emails. No other documents were included in the agency’s final response.

The agency’s search for responsive records was completely inadequate. “The adequacy of an agency’s search is measured by a standard of reasonableness, and is dependent upon the circumstances of the case.” *Truitt v. Dep’t of State*, 897 F.2d 540, 542 (D.C. Cir. 1990) (internal quotation marks omitted). “To satisfy its burden to show that no genuine issue of material fact exists as to the adequacy of its search, the agency must show that each agency component ‘has conducted a search reasonably calculated to uncover all relevant documents.’” *Heffernan v. Azar*, No. 15-2194 (RBW), 2018 U.S. Dist. LEXIS 106985, *9-10 (D.D.C. June 27, 2018) (quoting *Elliott v. USDA*, 596 F.3d 842, 851 (D.C. Cir. 2010)). ICE has utterly failed to do so here.

Mr. Blixseth’s aircraft with Tail Number N650GC was intercepted by ICE agents on three occasions in Las Vegas, Arizona, and Thermal, California. There were several witnesses present during those stops. The Thermal, California ICE stop was on October 19, 2010. The

ROGERS JOSEPH O'DONNELL ROGERS JOSEPH O'DONNELL

www.rjo.com

U.S. Immigration and Customs Enforcement
September 24, 2018
Page 2

ICE agents traveled from Riverside, California and communicated with the individuals on the plane and with permission, searched the aircraft.

Under its own policies, ICE is required to create and maintain all investigative files for any such activities, and as such, there must be responsive investigative records maintained by ICE in response to this Request. Accordingly, the agency's search was completely inadequate in failing to locate a single document regarding such investigative activities. *See In Def. of Animals v. NIH*, 543 F. Supp. 2d 83, 93 (D.D.C. Apr. 14, 2008) (finding that, "[a]t a minimum, a good faith search effort uses methods that can be reasonably expected to produce the information requested"); *see also Oglesby v. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990) ("[T]he agency cannot limit its search to only one record system if there are others that are likely to turn up the information requested.")

Please respond to this appeal as soon as possible and in accordance with 6 C.F.R. Part 5 § 5.8 to ensure that my client is able to properly pursue all available remedies as promptly as possible.

Best regards,

A handwritten signature in cursive script, appearing to read "Lisa N. Himes".

Lisa N. Himes

Exhibit 1

ROGERS JOSEPH O'DONNELL

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Robert Dollar Building
311 California Street, 10th Flr.
San Francisco CA 94104

April 17, 2018

VIA EMAIL AND FIRST CLASS MAIL

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009
Email: ICE-FOIA@dhs.gov

Re: Freedom of Information Act Request

To Whom It May Concern:

On behalf of client, Tim Blixseth, Rogers Joseph O'Donnell, PC makes this request for the records described below pursuant to the Freedom of Information Act, 5 U.S.C. § 552.

We request that you adhere to the time limitations set forth in 5 U.S.C. § 552(a)(6)(A). We also ask that you forward information related to any individual request without waiting until all records are located (i.e., please provide records on a rolling basis). If you determine that a record contains material exempt from disclosure, please review it for possible discretionary disclosure. In addition, we request that you produce any and all segregable portions of the record in question. Please notify me when responsive records are either furnished or specifically identified and denied for release. If no records exist for any request, please provide written confirmation of same.

We further request that, pursuant to 5 U.S.C. § 552(a)(3)(B), your agency produce responsive documents in the native electronic format in which the document was created. To the extent that your agency is unable to produce the responsive documents in the requested format, we request that your agency confirm that the record does not exist in native format and produce the documents in the following format, listed in accordance with our preference: 1) PDF format; or 2) paper copy. While the burden is on the government to produce all documents within the required time period, we are willing to discuss and agree upon the means and sequence of production to facilitate government compliance with the law.

To the extent that you determine that any subject document will not be disclosed because it meets any of the criteria in the FOIA for nondisclosure, you are requested to identify such documents in accordance with the requirements of *Vaughn v. Rosen*, 523 F.2d 1136 (D.C. Cir. 1975). To the extent that you determine that any subject document will not be disclosed because it is classified in accordance with document classification procedures of your Department, request is hereby made that such document be declassified or redacted sufficiently to enable useful review and inclusion of its identifying characteristics under *Vaughn v. Rosen*.

ROGERS JOSEPH O'DONNELL ROGERS JOSEPH O'DONNELL

www.rjo.com

U.S. Immigration and Customs Enforcement
April 17, 2018
Page 2

REQUESTED DOCUMENTS

Please provide the following records¹ to the undersigned:

1. All documents² that refer or relate to Blixseth, Aircraft Tail Number N650GC, or Yellowstone Aviation & Marine.
2. All emails from any and all of former U.S. ICE Director John Morton's email accounts from the period of January 1, 2010 through December 31, 2010, referencing:
 - a. N650GC
 - b. Yellowstone
 - c. Yellowstone Aviation & Marine
 - d. Blixseth

We are willing and able to pay all reasonable and applicable fees in connection with this request as required under statute and regulation. We request prior notice only if you determine that such costs will exceed \$1,000. Please feel free to contact me by phone (202-777-8953) or by email (lhimes@rjo.com) if you have any questions about this request or need further information.

Best regards,



Lisa N. Himes

¹ An "agency record" includes "the products of data compilation, such as all books, papers, maps, photographs, and machine readable materials, inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in DA possession and control at the time the FOIA request is made." 32 CFR § 518.7(b).

² As used herein, the term "document" should be interpreted broadly to include anything that constitutes an "agency record" including, but not limited to, emails and other electronic communications.

Exhibit 2

Freedom of Information Act Office

U.S. Department of Homeland Security
500 12th St SW, Stop 5009
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

August 16, 2018

Lisa Himes
Rogers Joseph O'Donnel, P.C.
875 15th St. NW
Ste 725
Washington, DC 20005

AUG 20 2018

RE: ICE FOIA Case Number 2018-ICFO-31995

Dear Mrs. Himes:

This letter is the final response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated April 17, 2018, for records regarding 1) All documents referring or related to Blixseth, Aircraft Tail Number N650GC, or Yellowstone Aviation & Marine. 2) All emails from any and all of former U.S. ICE Director John Morton's e-mail accounts from the period of January 1, 2010 through December 31, 2010, referencing; a. N650GC b. Yellowstone c. Yellowstone Aviation & Marine d. Blixseth..

ICE has considered your request under the FOIA, 5 U.S.C. § 552.

A search of the ICE Office of the Director and ICE Homeland Security Investigations (HSI) for records responsive to your request produced 357 pages that are responsive to your request. ICE has determined that 357 pages will be released in their entirety; ICE has claimed no deletions or exemptions.

If you deem this to be an adverse determination, you may exercise your appeal rights. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.8, to:

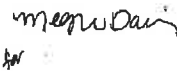
U.S. Immigration and Customs Enforcement
Office of the Principal Legal Advisor
U.S. Department of Homeland Security
500 12th Street, S.W., Mail Stop 5900
Washington, D.C. 20536-5900

Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Provisions of FOIA allow DHS to charge for processing fees, up to \$25, unless you seek a waiver of fees. In this instance, because the cost is below the \$25 minimum, there is no charge.

If you need any further assistance or would like to discuss any aspect of your request, please contact the FOIA office and refer to FOIA case number **2018-ICFO-31995**. You may send an e-mail to ice-foia@ice.dhs.gov, call toll free (866) 633-1182, or you may contact our FOIA Public Liaison, Fernando Pineiro, in the same manner. Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,



Catrina M. Pavlik-Keenan
FOIA Officer

Enclosure(s): 357 pages